

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1094V

Filed: December 18, 2015

Unpublished

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BETHANY ZELLMER-CESNIK,

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Petitioner,

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Damages Decision Based on Proffer;  
Influenza;  
Shoulder Injury ("SIRVA");  
Special Processing Unit ("SPU")

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

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Respondent.

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*Paul Brazil, Muller Brazil, LLP, Dresher, PA, for petitioner.  
Douglas Ross, U.S. Department of Justice, Washington, DC, for respondent.*

## DECISION AWARDING DAMAGES<sup>1</sup>

**Dorsey**, Chief Special Master:

On September 29, 2015, Petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> [the "Vaccine Act" or "Program"]. Petitioner alleges that she suffered a shoulder injury following receipt of her September 23, 2014 influenza vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 16, 2015, a ruling on entitlement was issued, finding petitioner entitled to compensation for a shoulder injury related to vaccine administration ("SIRVA"). On December 18, 2015, respondent filed a proffer on award of compensation ["Proffer"] indicating petitioner should be awarded \$75,000.00. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

award. Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$75,000.00 in the form of a check payable to petitioner, Bethany Zellmer-Cesnik.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

s/Nora Beth Dorsey

Nora Beth Dorsey

Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**  
**OFFICE OF SPECIAL MASTERS**

## RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On December 16, 2015, the Chief Special Master found that a preponderance of the medical evidence indicates that petitioner suffered a shoulder injury related to vaccine administration (“SIRVA”), which was causally related to the flu vaccination she received on September 23, 2014. The parties have now addressed the amount of compensation to be awarded in this case.

## **I. Items of Compensation**

Based upon the evidence of record, respondent proffers that petitioner should be awarded a total lump sum of \$75,000.00, which amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).<sup>1</sup> Petitioner agrees.

<sup>1</sup> Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.

**II. Form of the Award**

The parties recommend that the compensation provided to petitioner should be made through a lump sum payment of \$75,000.00 in the form of a check payable to petitioner.

Petitioner agrees.

Respectfully submitted,

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Director  
Torts Branch, Civil Division

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DATE: December 17, 2015